

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of:**

**Revision of the Public Notice  
Requirements of Section 73.3580**

**MB Docket No. 05-6**

**To: The Commission**

**COMMENTS OF STATION RESOURCE GROUP**

Station Resource Group (“SRG”) and Public Radio Capital (“PRC”) respectfully submit these Comments in response to the above-captioned Notice of Proposed Rule Making (“NPRM”), published in the Federal Register on June 30, 2005. The NPRM proposes to revise Section 73.3580 of the Commission’s Rules by standardizing the Public Notice (“Notice”) that must be given when a broadcast license is assigned or transferred, and by requiring noncommercial educational (“NCE”) stations to publish the Notice in a local newspaper.

SRG and PRC strongly support the goal of providing the public clearer, more understandable information about the process by which the FCC assigns and transfers broadcast licenses. SRG’s criticisms are reserved for aspects of the NPRM that do not achieve these goals.

SRG is a membership organization comprised of some of public radio’s leading NCE broadcasters. SRG’s 42 members operate 170 public radio stations across the country, account for a significant portion of public radio’s national audience and produce much of public radio’s acclaimed national programming. PRC is a nonprofit educational organization whose mission is to "strengthen our country's democratic traditions by protecting and expanding public radio's

critical role as a trusted source of news analysis and to increase the availability of good music on the radio."

## **DISCUSSION**

### **A. The Text of the Public Notice.**

Based upon an assumption that the public may not understand such terms as "assignment" and "transfer of control," the NPRM proposes to eliminate these terms and substitute the word "sale" to cover both assignments and transfers of licenses. The proposed text of the Notice provides:

On (date of filing application) (insert name of assignor or transferor), the owners of (call sign) filed an application with the FCC for consent to sell (call sign) to (insert name of assignee or transferee here)...[The application] contains additional information concerning the proposed buyer and the agreement for the sale of the station.

In many cases, such a Notice would egregiously misinform the public. Under current processing guidelines, a change in more than 50% of the directors of a self-perpetuating governing board of the licensee of a noncommercial broadcast station requires the filing of a long form transfer of control application (FCC Form 315) if the change occurs within a twelve-month period. See Transfers of Control of Certain Non-Stock Entities, 4 FCC Rcd 3403 (1989). The resulting transfer of control is from a previously approved board of directors to a new board of the nonprofit entity that holds the license of the station. Such transfers of control occur routinely when nonprofits have relatively small boards or when terms of directors are not staggered. To require such licensees to broadcast and publish an announcement characterizing a routine election of directors as a "sale" of the station would alarm and confuse the public. That confusion would be compounded by the fact that the "buyer" is identical to the "seller." To avoid such confusion, the Commission must give broadcast stations discretion to revise the Notice when the prescribed text is inaccurate or permit stations to retain the term "transfer of control. "

The proposed text of the Notice describes the assignor or transferor as the “owner” of the station. While the FCC analogizes directors of a nonprofit corporation to the voting shareholders of a for-profit corporation for purposes of its ownership and attribution rules, this legal fiction is not likely to be understood by the public. To the lay person, the proposed language inaccurately suggests that the directors of a nonprofit licensee hold an equity interest in an NCE station and that they will reap some personal financial benefit from the “sale” of the station license.

The last paragraph of the proposed Notice invites the public to access the application through the FCC website at [www.fcc.gov/e-file](http://www.fcc.gov/e-file). Acceptance of that invitation would introduce a member of the public to a formidable set of obstacles. After accessing this webpage, users are instructed to click on the “CDBS Public Access link and follow instructions found there.” Those who do so find themselves in the “FCC Electronic Filing & Public Access Systems,” where they are offered a lengthy menu of selections but no “instructions” on how to find information about station sales. Instead, the users must go to “CDBS Public Access,” search “Application Information,” conduct an “Application Search,” and then select the relevant assignment or transfer of control application based on the coded prefix of an application file number. Not exactly a user-friendly process.

The creation of an FCC site devoted specifically to proposed transfers and assignments of broadcast stations would do far more to educate and assist the public than newspaper publication of a prescribed legal notice. The FCC site should be titled “Broadcast Station Sales and Transfers,” and should appear prominently on the FCC homepage, immediately below the link now titled “Contacting the FCC.” The site should take members of the public directly to all pending assignment and long-form transfer of control applications. The site should also explain the distinction between an assignment and a transfer of control, and offer guidance for filing

comments or a petition to deny with the FCC. Last, but not least, the FCC site should instruct those who file comments or petitions to serve the contact representatives for the parties to the application.

## **B. Newspaper Publication**

Newspaper announcements are, of course, available only to readers and subscribers of newspapers -- a segment of the population that is rapidly declining. The belief that newspapers are still documents “of general circulation,” see 47 C.F.R. §3580(c)(1), is more difficult to defend every day. Far less than half the population of the country now read a daily newspaper. See Newspaper Association of America, *Facts About Newspapers*, 2004. Even if newspapers attracted a broader readership, many readers are likely to avoid, not devour, the section of the newspaper devoted to legal notices. Next to radio and TV listings, the classified section is the least read section of the newspaper. *Id.* As a practical matter, one of the best ways of assuring that the public are not informed about a matter is to bury an announcement about the matter in the legal notice section of a newspaper.

For all these reasons, the Commission’s faith in newspaper publication as an effective form of public notice is misguided. The more promising idea, discussed only briefly in the NPRM, is enhanced Internet publication. SRG recommends that, in lieu of newspaper publication of the Notice, NCE stations be allowed to post the Notice, along with a copy of the application, on their home page.

## **C. Defects in the Form of the Notice.**

The danger of prescribing the precise form of Notice is that of elevating form over substance. Any minor defect in the form of the Notice may be claimed to be a substantive violation of the Commission’s Rules or a misrepresentation of an applicant. The NPRM’s goal of

providing better information to the public should not obscure the fact that no form of public notice is perfect. Because the class of persons “interested” in the transfer or assignment of broadcast station licenses is impossible to define with precision, actual notice to every interested person is impossible. Any form of notice must be “constructive” in nature and general in content. For this reason, proposals that the Notice be expanded to include more detailed information about parties to the application, or that it be published in multiple languages, are misguided.

As the NPRM recognizes, the rule adopted should strive for a form of Notice that gives listeners “a meaningful opportunity” to participate in the process of assigning and transferring broadcast licenses. NPRM ¶ 3. Substantial, good faith compliance, not perfection, must be the standard for providing Notice, and minor defects in the form or timing of the Notice must not become a means of delaying prompt Commission action on an application.

In modifying the rules concerning public notice, the Commission should reaffirm the well-established principle that petitions to deny deadlines are governed by the public notices issued by the Commission, not the supplemental notices broadcast or published by broadcast stations. See Hispanic Information and Telecommunications Network v. FCC, 865 F.2d 1289 (D.C. Cir. 1989) (Commission’s public notice is sufficient if it permits someone exercising reasonable diligence to determine whether his or her interests are implicated).

## **CONCLUSION**

The most effective means of informing the public about pending applications to assign or transfer a broadcast license is an FCC Internet site devoted to this subject. SRG and PRC recommend that the FCC develop a site that will give the public ready access to all pending assignment and long-form transfer of control applications, and provide information about how to file and serve comments or petitions.

SRG and PRC propose that Section 73.3580(e) be revised to permit NCE stations to satisfy the public notice requirements by broadcasting and posting a Notice, together with a copy of the assignment or transfer of control application, on the station's home page. The Notice and application should remain posted until the petition to deny period has passed. Additional newspaper publication of the Notice by NCE stations would not increase the effectiveness of the Notice.

If 47 C.F.R. § 3580 is revised to specify the text of an announcement, SRG proposes that the suggested text of the announcement be as follows:

On (date of filing application), (insert name of assignor or transferor), an application to (sell or transfer control of, as the case may be) station (call sign(s) and community or communities of license) was filed with the Federal Communications Commission.

A copy of the application, including information about the parties and the terms of the agreement, may be accessed at (the website of the assignor or transferor) and through the FCC's website at \_\_\_\_\_.

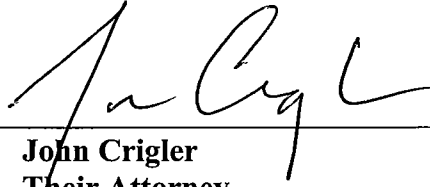
Petitions to deny the application must be filed no later than (the 30th day after the FCC's issuance of the public notice of the acceptance for filing of the application). Informal comments may be filed any time before the application is granted. Information about how to file documents with the FCC is available at (FCC website).

The rule should permit broadcasters to revise the suggested text of the Notice when the prescribed text is misleading or inaccurate. In adopting the rule, the Commission should reaffirm the principle that local notices supplement the official Public Notice issued by the FCC and do not alter the date by which petitions to deny are due.

Respectfully submitted

**STATION RESOURCE GROUP and  
PUBLIC RADIO CAPITAL**

By:



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